IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

CHARTERED ACCOUNTANT REFERENCE CASE NO.4 OF 2003

Council of the Institute of Chartered
Accountants of India,
Indraprastha Marg, New Delhi .. Petitioner

v/s.

Shri P.V.Kalyanasundaram, FCA,
Chartered Accountant,
1/A, Vissanji Park,
Nigaum Cross Road,
Dadar (Eest),
Mumbai-400 014. .. Respondent

Dr.Virendra Tulzapurkar, senior counsel with Ms.S.Srikrishna i/by M/s.Kanga & Co. for petitioner.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 18th October, 2004

ORAL JUDGMENT (Per R.M.Lodha, J.)

The Council of the Institute of Chartered Accountants of India has recommended that the name of respondent be removed from the register of members for a period of six months as he was found guilty of professional misconduct within the meaning of Clauses (7) and (8) of PART I of second schedule to the Chartered Accountants Act, 1949 (for short 'Act of 1949'). This is how this reference under section 21(5) of the Act of 1949 is before us.

2. On the basis of the information that amounted

to professional misconduct received by the Institute of Chartered Accountants of India, the respondent was asked to have his say. The respondent sent his reply. Upon receipt of the reply from the respondent, the Council of the Institute of Chartered Accountants of India (for short 'Council') prima facie held that the respondent was guilty of professional and/or other misconduct and accordingly, decided to enquire into the matter by the Disciplinary Authority. On the basis of the oral and documentary evidence, the Disciplinary Committee was of the view that the respondent was guilty of professional misconduct and accordingly, forwarded its report to the Council. The Council sent the report of the Disciplinary Committee to the respondent and called for his written representation/explanation. Neither the respondent himself nor his authorised representative appeared before the Council. The Council considered the report of the Disciplinary Authority and concurred with the finding of the Disciplinary Authority that the respondent was guilty of professional misconduct within the meaning of Clauses (7) and (8) of Part-I of second schedule of the Act of 1949 and recommended to this court that the name of respondent be removed from the register of members for a period of six months.

3. The gravaman of the charge against the

respondent is thus-

(a) The Respondent; submitted the tax audit reports in respect of the said firms (mentioned in para 1 above) without attaching the relevant Balance Sheets and Profit and Loss accounts.

(b) The Respondent issued the tax audit reports under Section 44 AB of the Income tax Act in respect of the

aforesaid firms, without examining/satisfying whether the Balance Sheet and Profit & Loss Accounts were in agreement with the respective books of account, maintained by the firms.

(c) Even though the Respondent was aware of the fact that the books of account were not proper and were incomplete, yet he gave a certificate in Form 3CB certifying that proper books of account have been kept and the said accounts gave a true and fair view in case of Balance Sheets and Profit & Loss accounts of the assessees.

4. The respondent did not put forth any false explanation denying the misconduct but made a candid disclosure that considering the break neck competition, delayed fees collection, increased overheads detrimental to survival, the lenient view be taken against him as he has been in practice for the past 17 years without any blemish. In the backdrop of the candid attitude of the respondent, we find it difficult to accept the recommendation of the Council that the name of the respondent be removed from the register of members for six months. After all, the respondent was honest in accepting the misconduct on his part and did not

tender false explanation justifying his action.

5. Though we concur that the respondent is guilty of other misconduct within the meaning of sections 21 and 22 of the Chartered Accountants Act, 1949, however, we are unable to accept the recommendation of the Council that the name of respondent be removed from the register of members for six months; instead we reprimand the respondent.

6. Reference is disposed of accordingly.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)